to which such person has fled to cause him to be arrested" (R. S. § 5278). Plaintiff was arrested on the belief that she was implicated in a recent murder committed in another state. Investigation showed that the belief was unfounded, whereupon the plaintiff was discharged. The police acted solely on telegraphic communication; no warrant had been issued, nor had the prosecuting state made requisition. The question before the Supreme Court was whether such arrest before requisition was contrary to federal law. *Held*, that no federal right was infringed. *Burton* v. *New York Central, etc. R. Co.*, 38 Sup. Ct. Rep. 108.

Obviously the power of a state to arrest, within its borders, persons charged with having committed a crime elsewhere, arises not from any theory of authorization from another state, but from its own sovereignty, and is subject only to such duties and restrictions as it has empowered the federal government to impose. The statute in question makes it a duty to arrest when proper demand is made by the prosecuting state. But to imply from this a restriction that a state shall not arrest one under suspicion of crime committed in another state until the prosecuting state issues the papers of requisition is an unwarranted construction, and would seriously hinder the operation of interstate rendition. This was the only federal question involved; the decision is plainly right. At common law it has been uniformly held that arrest prior to requisition is legal. *In re Fetter*, 23 N. J. L. 311; *Simmons* v. *Van Dyke*, 138 Ind. 380, 37 N. E. 973; *State* v. *Taylor*, 70 Vt. 1, 39 Atl. 447. In many states the matter is specifically regulated by statute. *Ex parte Rosenblat*, 51 Cal. 285; *Ex parte Ammon*, 34 Ohio St. 518; *Malcolmson* v. *Scott*, 56 Mich. 459. See 2 MOORE, EXTRADITIONS AND INTERSTATE RENDITION, Appendix.

BANKS AND BANKING — NATIONAL BANKS — ASSESSMENTS — APPLICATION OF PAYMENTS. — A receiver was appointed for the insolvent, A. National Bank, which owned bonds, then worth sixty-five cents on the dollar on the market. A 100-per cent assessment was levied by the comptroller. The shareholders agreed to an apportionment of the bonds. All shareholders, except defendant savings banks, were to purchase their allotments at 95 cents on the dollar. Since defendants could not purchase such bonds they were to pay to the receiver the required advance over the market value, *i. e.*, 30 cents on the dollar, on the bonds allotted to them. This advance payment was equal to 82 per cent of the assessment. After the agreement was carried out the assessment was withdrawn. An action is brought against the savings banks on a second assessment of 49 per cent. *Held*, that the defendants are not liable. *Korbly* v. *Springfield Institution for Savings*, 38 Sup. Ct. Rep. 88.

Adopting the court's view that there was a contract between shareholders by which the savings banks were bound to pay to the receiver 30 cents on the dollar on the bonds allotted to them, since neither the banks nor the receiver made any express application of the payment made, the court should construe the acts of the parties to determine what application was actually made. See 21 HARV. L. REV. 623. But the real transaction appears to be a purchase of the bonds by those shareholders who had power, and a payment by all shareholders of 82 per cent of the first assessment. There is nothing denying the comptroller's power to withdraw an assessment as to that part unpaid. See U. S. REV. STAT. § 5151. The policy of the statute clearly favors such power. The comptroller has power to make successive assessments. *Studebaker* v. *Perry*, 184 U. S. 258. But the total liability of shareholders is limited to 100 per cent. See U. S. REV. STAT. § 5151. Therefore, an assessment of 49 per cent, after 82 per cent of the total liability was paid, was excessive and void.

COLOR OF TITLE — WHAT DIVESTS COLOR OF TITLE. — The owner of vacant land conveyed it to plaintiff by a valid warranty deed. Plaintiff was delin-

quent in payment of taxes, and a tax deed was issued to the county, which conveyed to defendant's grantor. Thereafter plaintiff paid all the taxes and after seven years brought suit to clear his title. By statute, one "having color of title made in good faith to vacant and unoccupied lands" shall, having paid taxes seven years, be deemed the owner (1915 REM. CODE, [Wash.] § 789). *Held*, that plaintiff had color of title, and judgment should therefore be in his favor. *Bassett* v. *City of Spokane*, 168 Pac. 478 (Wash.).

It seems settled that if the writing under which color of title is claimed is adjudicated void in an action to which the claimant is a party, he no longer holds under color of title within the meaning of the short limitation statutes. *May* v. *Sutherlin*, 41 Wash. 609, 84 Pac. 585; *Sholl* v. *German Coal Co.*, 139 Ill. 21, 28 N. E. 748. It has also been held that color of title is divested by a sale of the land on execution. *Wilson* v. *Brown*, 134 N. C. 400, 46 S. E. 762. But where the claimant continues to hold the land believing the sale invalid, it is not divested. *Gaines* v. *Saunders*, 87 Mo. 557. The theory underlying these decisions would seem to be that color of title remains, but that an adjudication or sheriff's sale is *prima facie* evidence that the claimant does not hold in good faith. The test of good faith is subjective. *Lee* v. *O'Quinn*, 103 Ga. 355, 30 S. E. 356. Therefore the *prima facie* case made out by the decree or sale is rebuttable by any proof that the claimant believed his deed was still valid, however unreasonably. *Gaines* v. *Saunders*, *supra*. In the May case, where the decision was expressly based on want of good faith, the court seems to have thought the decree made out a conclusive case, but as there was no rebutting evidence of good faith it cannot be taken as an authority to that effect. *May* v. *Sutherlin*, *supra*. So the distinction made in the principal case between *in personam* adjudications of title and judgments *in rem*, which seems to have no basis on principle, is not borne out by the decisions. In the principal case good faith was not in issue, but if it had been, then under this view plaintiff must have affirmatively proved good faith in order to prevail.

CONFLICT OF LAW — EQUITY — ORDERING AFFIRMATIVE ACTION OUTSIDE THE JURISDICTION TO PREVENT A TORT WITHIN. — In a case involving the respective rights of the plaintiff and the defendant to water from an interstate stream, the United States District Court of Idaho ordered the defendant to install automatic measuring devices in its irrigation ditches in Nevada, and decreed that the plaintiff should have the right perpetually to go upon the defendant's land in Nevada for the purpose of inspecting them. An appeal was taken to the Circuit Court of Appeals. *Held*, that the action of the District Court be sustained. *Vineyard Land and Stock Co.* v. *Twin Falls Salmon River Land and Water Co.*, 245 Fed. 9.

For a discussion of this case, see Notes, page 647.

CONSIDERATION — WHAT CONSTITUTES CONSIDERATION — PERFORMANCE OF A PREËXISTING CONTRACT. — The daughter of the defendant was engaged to be married. The defendant promised her intended husband, that, if the marriage took place, he would pay his daughter an annuity. They were married, and the assignee of the husband and wife sued on the promise. *Held*, that he may recover. *De Cicco* v. *Sweitzer*, 58 N. Y. L. J. 633.

The finding by the lower court of an intent to contract removes the possibility of a conditional gift. See *Kirksey* v. *Kirksey*, 8 Ala. 131. The beneficiary has the right to sue in New York. *Lawrence* v. *Fox*, 20 N. Y. 268; *Buchanan* v. *Tilden*, 158 N. Y. 109, 52 N. E. 724. The question in the case is the validity of the consideration. An act which the promisee is legally bound to perform is not valid consideration for the promise of a third person. *Arend* v. *Smith*, 151 N. Y. 502, 45 N. E. 872. But see Samuel Williston, "Consideration in Bilateral Contracts," 27 HARV. L. REV. 503. However, in the present case the act